

## Federal Acquisition Regulation

36.102

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### Subpart 36.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements.

- 36.700 Scope of subpart.
- 36.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.
- 36.702 Forms for use in contracting for architect-engineer services.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

SOURCE: 48 FR 42356, Sept. 19, 1983, unless otherwise noted.

#### 36.000 Scope of part.

This part prescribes policies and procedures peculiar to contracting for construction and architect-engineer services. It includes requirements for using certain clauses and standard forms that apply also to contracts for dismantling, demolition, or removal of improvements.

#### 36.001 Definitions.

As used in this part—

*Construction and demolition materials and debris* means materials and debris generated during construction, renovation, demolition, or dismantling of all structures and buildings and associated infrastructure.

*Diverting* means redirecting materials that might otherwise be placed in the waste stream to recycling or recovery, excluding diversion to waste-to-energy facilities.

[76 FR 31401, May 31, 2011]

### Subpart 36.1—General

#### 36.101 Applicability.

(a) Construction and architect-engineer contracts are subject to the requirements in other parts of this regulation, which shall be followed when applicable.

(b) When a requirement in this part is inconsistent with a requirement in another part of this regulation, this part 36 shall take precedence if the acquisition of construction or architect-engineer services is involved.

(c) A contract for both construction and supplies or services shall include (1) clauses applicable to the predominant part of the work (see subpart 22.4), or (2) if the contract is divided into parts, the clauses applicable to each portion.

[48 FR 42356, Sept. 19, 1983, as amended at 57 FR 55471, Nov. 25, 1992; 58 FR 12140, Mar. 2, 1993]

#### 36.102 Definitions.

As used in this part—

*Contract* is intended to refer to a contract for construction or a contract for architect-engineer services, unless another meaning is clearly intended.

*Design* means defining the construction requirement (including the functional relationships and technical systems to be used, such as architectural, environmental, structural, electrical, mechanical, and fire protection), producing the technical specifications and drawings, and preparing the construction cost estimate.

*Design-bid-build* means the traditional delivery method where design and construction are sequential and

contracted for separately with two contracts and two contractors.

*Design-build* means combining design and construction in a single contract with one contractor.

*Firm* in conjunction with architect-engineer services, means any individual, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

*Plans and specifications* means drawings, specifications, and other data for and preliminary to the construction.

*Record drawings* means drawings submitted by a contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract.

*Two-phase design-build selection procedures* is a selection method in which a limited number of offerors (normally five or fewer) is selected during Phase One to submit detailed proposals for Phase Two (see subpart 36.3).

[48 FR 42356, Sept. 19, 1983, as amended at 51 FR 36972, Oct. 16, 1986; 54 FR 13336, Mar. 31, 1989; 54 FR 19827, May 8, 1989; 56 FR 29128, June 25, 1991; 62 FR 272, Jan. 2, 1997; 64 FR 72432, Dec. 27, 1999; 66 FR 2132, Jan. 10, 2001]

### 36.103 Methods of contracting.

(a) The contracting officer shall use sealed bid procedures for a construction contract if the conditions in 6.401(a) apply, unless the contract will be performed outside the United States and its outlying areas. (See 6.401(b)(2).)

(b) Contracting officers shall acquire architect-engineer services by negotiation, and select sources in accordance with applicable law, subpart 36.6, and agency regulations.

[48 FR 42356, Sept. 19, 1983, as amended at 50 FR 1744, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 68 FR 28083, May 22, 2003]

### 36.104 Policy.

(a) Unless the traditional acquisition approach of design-bid-build established under 40 U.S.C. chapter 11, Selection of Architects and Engineers, or another acquisition procedure authorized by law is used, the contracting officer shall use the two-phase selection procedures authorized by 10 U.S.C. 2305a or 41 U.S.C. 3309 when entering into a contract for the design and construction of a public building, facility, or work, if the contracting officer makes a determination that the procedures are appropriate for use (see subpart 36.3). Other acquisition procedures authorized by law include the procedures established in this part and other parts of this chapter and, for DoD, the design-build process described in 10 U.S.C. 2862.

(b) Agencies shall implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices so as to—

(1) Ensure that all new construction, major renovation, or repair and alteration of Federal buildings complies with the Guiding Principles for Federal Leadership in High-Performance and Sustainable Buildings (available at [http://www.wbdg.org/pdfs/hpsb\\_guidance.pdf](http://www.wbdg.org/pdfs/hpsb_guidance.pdf));

(2) Pursue cost-effective, innovative strategies, such as highly reflective and vegetated roofs, to minimize consumption of energy, water, and materials;

(3) Identify alternatives to renovation that reduce existing assets' deferred maintenance costs;

(4) Ensure that rehabilitation of Federally-owned historic buildings utilizes best practices and technologies in retrofitting to promote long-term viability of the buildings; and

(5) Ensure pollution prevention and eliminate waste by diverting at least 50 percent of construction and demolition materials and debris by the end of Fiscal Year 2015.

[76 FR 31401, May 31, 2011, as amended at 79 FR 24212, Apr. 29, 2014]

**Subpart 36.2—Special Aspects of Contracting for Construction**

### 36.201 Evaluation of contractor performance.

#### 36.201 Evaluation of contractor performance.

See 42.1502(e) for the requirements for preparing past performance evaluations for construction contracts.

[74 FR 31560, July 1, 2009]